

Division of Hearings and Appeals

EXHIBITS

This case was unique in that there were two agency representatives. One agency representative from Milwaukee appeared regarding the reduction of FS benefits effective July 1, 2014. We did a hearing concerning that issue without the second representative. Then another agency representative from Madison appeared on a separate phone call regarding the tax intercept issue. I accepted exhibits separately from each agency representative. Therefore the purposes of this decision I am referring to the exhibits regarding the FS reduction as FOO 1 – 6, and the second hearing regarding the tax intercept as FTI 1 – 8.

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On September 6, 2013 the agency sent Petitioner a notification of FoodShare Overissuance, claim number [REDACTED], asserting a \$3,088.00 overpayment from March 5, 2013 through August 31, 2013. (FTI - Exhibit 1). This notice was sent to Petitioner in [REDACTED] in [REDACTED]. *Id.* This notice included an explanation of Petitioner's appeal rights, and the applicable timeframes for filing an appeal. *Id.*
3. On October 15, 2013 Petitioner called the [REDACTED] State Agency inquiring about the overpayment. (FTI - Exhibit 2). Petitioner updated the agency with a new address, still in [REDACTED]. *Id.* Petitioner further stated that she never applied for FS benefits in [REDACTED], and requested a copy of the original application. *Id.* She did not appeal the overpayment at that time. *Id.*
4. On October 31, 2013 the agency sent Petitioner another Notification of FS Overissuance to Petitioner's updated address. (FTI - Exhibit 3). This notice also included an explanation of Petitioner's appeal rights, and the applicable timeframes for filing an appeal. *Id.*
5. On November 4, 2013 the agency sent Petitioner a repayment agreement. (Exhibit 4).
6. On December 3, 2013 the agency sent Petitioner a dunning notice reminding her about the \$3088 overpayment that she needed to repay. (FTI - Exhibit 5).
7. On January 3, 2014 the agency sent Petitioner a second dunning notice. (FTI - Exhibit 6).
8. On February 4, 2014 the agency sent Petitioner a third dunning notice. (FTI - Exhibit 7).
9. On March 14, 2014 the agency sent Petitioner a notice, indicating that it may intercept any tax refund to which she might be entitled to satisfy the \$3088 overpayment of FoodShare benefits. (FTI - Exhibit 8).
10. Petitioner then moved from [REDACTED] to [REDACTED]. (FTI – Exhibit 8 and FOO – Exhibit 4).
11. On May 1, 2014 Petitioner applied for FS benefits in [REDACTED]. (FOO – Exhibit 4).
12. On May 5, 2014 the agency mailed Petitioner notice that she would receive \$497 in monthly FS benefits for May 1, 2014 through May 31, 2014, and \$448 in monthly benefits effective June 1, 2014. (FOO – Exhibit 4). This \$49 decrease was due to the overpayment recoupment. (Testimony of Belinda Bridges).
13. On June 9, 2014 the agency mailed Petitioner notice that effective July 1, 2014 her monthly FS benefits will decrease to \$366. This decrease was two-fold. (Testimony of Belinda Bridges). First there was an increase in Petitioner's unearned income, which allowed for \$406 in monthly FS benefits. *Id.* The benefits were further reduced by \$40 to \$366 because the agency was still recouping the overpayment. *Id.*

14. Following this June 9, 2014 reduction notice Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 23, 2014. (FOO – Exhibit 1). In her request for fair hearing Petitioner stated that “someone else was receiving benefits in me and my children name in the State of WI when I was in MS.” *Id.*

DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

A Notification of FoodShare Overissuance, a FoodShare Overissuance Worksheet and a repayment agreement must be issued to the household/recipient. *FoodShare [REDACTED] Handbook*, §7.3.1.8. If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.*

The State of [REDACTED] Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overissuance.

To use tax intercept, the person must have received three or more dunning notices and the debt must be:

1. Valid and legally enforceable.
2. State: All error types
Federal: All error types.
3. State: At least \$20;
Federal: At least \$25.
4. State: At least 30 days from notification of Overissuance;
Federal: Not more than 10 years past due from notification date except in fraud cases. There is no delinquency period for fraud.
5. Free from any current appeals.
6. Incurred by someone who has not filed bankruptcy, nor has their spouse.

FoodShare [REDACTED] Handbook §7.3.2.10 Tax Intercept

Wis. Stat., §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of FS, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3).

The hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... **may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.**

Emphasis added

A party has 30-days from the date of the letter/notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2; FSH §7.3.2.11

The agency argues that Petitioner's appeal is untimely. I agree with the agency. Petitioners' appeal of the tax intercept is untimely because she is outside the 30 day window. The date of the notice was March 14, 2014, and our agency received Petitioner's request for fair hearing on June 23, 2014. This is over three months, which is well beyond the 30 day statutory time limit.

At the hearing Petitioner's main issue was the overpayment. Petitioner argued that she never received these [REDACTED] benefits while she was in [REDACTED], and another person used her identity. There is a mandated 90 day time limit for filing an appeal in a FS case. See 7 C.F.R. §273.15(g); also Wis. Adm. Code §HA 3.05(3)(b).

Petitioner admitted to receiving one notice of the overpayment. There were two notices of overpayment. The first notice was sent on September 6, 2013. The second notice was sent on October 31, 2013. Petitioner first appealed on June 23, 2014 when she received the notice of her second reduction in FS benefits due to overpayment recoupment. Even assuming Petitioner only received the second notice, her time limit for appeal ended in January of 2014. Therefore Petitioner's appeal of this overpayment in June 2014 is untimely. Although it is immaterial for the issue of the overpayment, I further find that Petitioner received all of the notices mailed to her at her second address in [REDACTED]. That was the updated address that she provided and nothing was returned as not delivered.

As stated above, the State is required to recover overpayments. The agency is to recover from a FS group participating in the program by reducing their allotment. FSH §7.3.2.6; Exhibit FOO-6. If the overpayment is due to client or agency error, then the client's monthly FS benefits are reduced by 10 percent or \$10, whichever is greater. *Id.* If the overpayment is due to an intentional program violation, then the client's monthly FS benefits are reduced by 20 percent or \$10, whichever is greater. *Id.*

In this case the agency correctly reduced Petitioner's monthly FS benefits by 10 percent or \$40. The agency does not appear to be treating this as an intentional violation, but rather is giving the Petitioner the benefit of the doubt, and treating it as an error. If Petitioner truly feels that she was the victim of identity theft, then Petitioner should contact the Milwaukee Police Department to report this crime. In the event of prosecution, this amount could be recovered through restitution. With or without prosecution Petitioner may pursue civil action against this person she suspects. I am without jurisdiction to address the overpayment issue and the agency must recover these overpayments through both tax intercepts and reductions in benefits.

CONCLUSIONS OF LAW

Petitioner's appeal of the tax intercept and overpayment are untimely. Therefore, the agency correctly reduced Petitioner's monthly FS benefits to recoup the overpayment.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

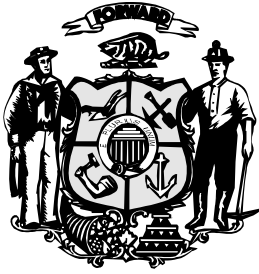
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, [REDACTED] 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
[REDACTED], this 14th day of July, 2014

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of [REDACTED] DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 14, 2014.

Public Assistance Collection Unit
Public Assistance Collection Unit